

No. 15234

United States
Court of Appeals
for the Ninth Circuit

ACME DISTRIBUTING COMPANY, CALI-
FORNIA BEVERAGE & SUPPLY CO., and
YOUNG'S MARKET COMPANY,

Appellants,

vs.

JOHN COLLINS, Doing Business as Stan's Stage
Coach Stop, Alleged Bankrupt,

Appellee.

Supplemental
Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILE

APR - 5 1957

PAUL P. O'BRIEN,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States District Court, Southern
District of California, Central Division

No. 67977-Y

In the Matter of:

JOHN COLLINS, Doing Business as Stan's Stage
Coach Stop,

Alleged Bankrupt.

STIPULATION

It appearing that the Reporter's Transcript of Testimony of Temperance Bailey (December 5, 1955) filed in the within proceedings on January 18, 1956, has not been certified as part of the record on review in the within proceeding, and it

Further appearing that said transcript and the testimony contained therein was considered by the Honorable Leon R. Yankwich, District Judge, upon the hearing on the Petition for Review of the Order Adjudging the alleged bankrupt a bankrupt, now, therefore,

It Is Hereby Stipulated by and between the alleged bankrupt above-named and the petitioning creditors on the creditors' involuntary petition herein that an order may be made and entered herein directing the Honorable Benno M. Brink, Referee in Bankruptcy, to certify up as part of the record on review that certain transcript, to wit, Reporter's Transcript of Testimony of Temperance Bailey (December 5, 1955), filed in the office of said Ref-

eree on January 18, 1956, and that said transcript be included as part of the record on review, and that the clerk of this court certify the same as a supplement to and part of the record on appeal to the United States Court of Appeals for the Ninth Circuit, in Case No. 15234, entitled "Acme Distributing Company, California Beverage & Supply Co., and Young's Market Company, Appellants, vs. John Collins, doing business as Stan's Stage Coach Stop, alleged bankrupt, Appellee."

Dated this 4th day of March, 1957.

GRAINGER, CARVER AND
GRAINGER,
PATRICIA HOFSTETTER,

By /s/ A. O. CARVER,
Attorneys for Alleged
Bankrupt.

CRAIG WELLER &
LAUGHARN,

By /s/ THOMAS S. TOBIN,
Attorneys for Petitioning
Creditors.

[Endorsed]: Filed March 4, 1957.

[Title of District Court and Cause.]

ORDER DIRECTING REFEREE TO CERTIFY
UP AS PART OF RECORD ON REVIEW
CERTAIN TRANSCRIPT, AND DIRECT-
ING CLERK OF COURT TO CERTIFY
SAME AS SUPPLEMENT TO RECORD
ON APPEAL

Upon stipulation of the Alleged Bankrupt above-named and the petitioning creditors on the Creditors' Involuntary Petition in Bankruptcy herein, and good cause appearing therefor, and it appearing that the transcript and the testimony of Temperance Bailey contained therein taken December 5, 1955, were considered by the Court upon the hearing on the Petition for Review of the Order Adjudging the alleged bankrupt a bankrupt, now, therefore, no adverse interests appearing,

It Is Ordered that Benno M. Brink, Referee in Bankruptcy herein, be, and he hereby is directed to certify up as part of the record on review herein that certain transcript, to wit, Reporter's Transcript of Testimony of Temperance Bailey taken December 5, 1955, filed in his clerk's office on January 18, 1956.

It Is Further Ordered that upon such certification that said transcript be included as part of the record on review, and John A. Childress, clerk of this court, certify the same as a supplement to and part of the record on appeal to the United States Court of Appeals for the Ninth Circuit, in Case No.

15234, entitled "Acme Distributing Company, California Beverage & Supply Co., and Young's Market Company, Appellants, vs. John Collins, doing business as Stan's Stage Coach Stop, alleged bankrupt, appellee."

Dated this 4th day of March, 1957.

/s/ LEON R. YANKWICH,
District Judge.

[Endorsed]: Filed March 4, 1957.

[Title of District Court and Cause.]

SUPPLEMENT TO REFEREE'S CERTIFICATE ON PETITION FOR REVIEW OF ORDER OF ADJUDICATION

To the Honorable Leon R. Yankwich, Judge of the above-entitled Court:

Pursuant to the Order made in the above-mentioned proceeding on March 4, 1957, I, Benno M. Brink, one of the Referees in Bankruptcy of said Court, before whom the above-entitled matter is pending under an order of general reference, do hereby supplement my Referee's Certificate on Petition for Review of Order of Adjudication which I filed on January 6, 1956, by transmitting herewith the Reporter's Transcript of Testimony of Temperance Bailey taken December 5, 1955, and which Transcript was filed on January 18, 1956.

Respectfully submitted this 5th day of March,
1957.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed March 5, 1957.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF TESTIMONY
OF TEMPERANCE BAILEY, DECEMBER
5, 1955

TEMPERANCE BAILEY

being first duly sworn, testified as follows:

Examination

By Mrs. Carver:

Q. In December, 1951, were you connected with
the Bank of America in Whittier? A. Yes.

Q. What was your business at that time?

A. Escrow officer.

Q. As escrow officer did you have charge of
Escrow No. 18621? A. I did.

Q. That is an escrow in which real property
was purchased and title taken in the name of Ada
J. Collins? A. Yes.

Q. In connection with the escrow that you han-
dled at your bank, what is the procedure in the bank
as to property that is taken as separate property,
of either husband or wife?

The Referee: I do not see how that is competent.

Mrs. Carver: I want to show what was done.

The Referee: You may go into this particular transaction, but what the custom or policy of the bank is is immaterial.

Q. (By Mrs. Carver): At the time the escrow was opened did you have any conversation with Mr. Collins as to this particular escrow?

Mr. Tobin: Objected to, lack of foundation.

The Referee: I think you may ask further questions.

Q. (By Mrs. Carver): Do you recall any conversation that you had with Mr. Collins at or about the time that this escrow was to be opened? [2*]

Mr. Tobin: Objected to; not binding on the petitioning creditors; hearsay.

The Referee: Objection overruled. You may answer whether you had a conversation with Mr. Collins.

A. I don't recall.

Q. (By Mrs. Carver): Do you recall having had any conversation during the pendency of the escrow with Mr. Collins?

A. This was in 1951, and I couldn't remember.

The Referee: Mrs. Bailey, you do not have to explain. We know you are a busy woman. Sometimes people in your capacity do happen to remember something about a particular transaction.

A. I don't recall any conversation.

Q. (By Mrs. Carver): In connection with this escrow, did Mr. Collins ever sign a statement required by the bank, investing title to the property?

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Referee: You are asking whether or not she has in her papers, in the escrow, any statement signed by Mr. Collins. Do you have in the escrow a statement of any kind by John Collins?

A. There is nothing in the file which has John Collins' signature on it.

Q. (By Mrs. Carver): In investing title to property, to either spouse, separate property, both parties have to sign a request—is that right? [3]

Mr. Tobin: Objected to; incompetent; calling for a legal conclusion; hearsay; not binding on the petitioning creditors.

The Referee: Objection overruled, because this is an effort, apparently, to locate a paper which counsel for Mr. Collins believes might be in this file. Is there any possibility, Mrs. Bailey, that any paper that was used in this file is not now in the file?

Mrs. Carver: May I interrupt? It is to show there was no such paper signed—which is a necessary paper. It was a matter of vesting title.

The Referee: I don't understand it. Will you please explain?

Mrs. Carver: It is my understanding that before the bank, or title company, would issue a title to property as one spouse's separate property, each spouse must sign, that it is the intention that it is to be separate property; and the bank, acting as escrow, requires that statement before they will vest the title.

The Referee: If you are talking about the policy of title insurance and not about the escrow—the pol-

icy is not issued by the escrow holder. How does the policy show?

Mrs. Carver: The policy shows the same as the deed.

The Referee: Have you got the policy of title insurance?

Mrs. Carver: I imagine the holder of the incumbrance [4] has the policy.

The Referee: Let us see whether or not we could ask her any question that would be competent and material. Mrs. Bailey, you do have occasions in your business to request a title company to issue a policy of title insurance on property which is passing through your escrow, is that not the fact?

A. Yes.

Q. You do have occasions where property is requested to be vested in a married woman as her separate property—you do have those situations?

A. Yes.

Q. When you request a policy of title insurance in that kind of a situation—where the title is to be vested in a married woman as separate property, do you transmit to the title company any papers in addition to the deed?

A. The deed would contain a clause that it was to be—was deeded to the one, the grantee, the property to be the separate property; but there would be an agreement deed, signed by husband and wife that it was to be the separate property of the grantee.

Q. In other words, your custom, then, would be that the husband would sign on the deed itself?

A. Yes; either that or a quitclaim deed, in a separate instrument.

Q. The husband would execute a quitclaim deed?

A. It would be embodied in the instructions. [5]

The Referee: Now, we have the instrument here, as Petitioning Creditors' Exhibit No. 8; and the Court finds nothing with respect to the vesting of the title. You say it would be right on this instrument?

A. Yes.

The Referee: Is there anything else?

Mrs. Carver: That is all.

Mr. Tobin: No cross-examination.

(Witness excused.) [6]

I, Arthur J. Hughes, shorthand reporter, do hereby certify that on the 5th day of December, 1955, I reported in shorthand the proceedings had and testimony taken of Temperance Bailey, before Hon. Benno M. Brink, Referee in Bankruptcy; that thereafter I reduced to typewriting said matter; and that the foregoing pages are a full, true and correct transcript of such.

Dated January 16, 1956.

/s/ ARTHUR J. HUGHES.

[Endorsed]: Filed January 18, 1956. [7]

[Endorsed]: No. 15234. United States Court of Appeals for the Ninth Circuit. Acme Distributing Company, California Beverage & Supply Co., and Young's Market Company, Appellants, vs. John Collins, Doing Business as Stan's Stage Coach Stop, Alleged Bankrupt, Appellee. Supplemental Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed March 20, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.